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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE
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12 RICHARD O'NEAL, an individual,

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14 Plaintiff,

15 v.

16 CITY OF PACIFIC, a municipal corporation, et
17 al.,

18 Defendants.
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CASE NO. C11-0231RSM

ORDER ON MOTION FOR
RECONSIDERATION

20 This matter is before the Court on defendants' motion for reconsideration. Dkt. # 30.
21 Defendants ask the Court to reconsider the February 17, 2012 Order denying defendants' motion for
22 summary judgment. Dkt. # 28. Such motions are disfavored and will be denied in the absence of "a
23 showing of manifest error in the prior ruling or a showing of new facts or legal authority which could
24 not have been brought to its attention earlier. . . ." Local Rule CR 7(h)(1). The Court deems it
25 unnecessary to direct plaintiff to respond to the motion.

26 Defendant asserts in the motion that

27 [h]ere, contrary to the statement of the Court (Dkt. 28, p. 5, lines 4-5), there are no genuine
28 issues of material fact. The fact that plaintiff's arm was broken is not in dispute. The only
evidence that plaintiff relies upon for his allegation of excessive force is the videotape of the

1 incident. . . . There does not appear to be anything in the video itself that would allow a trier
2 of fact to conclude that the officers were acting intentionally or recklessly in an effort to harm
3 plaintiff. If the court can discern some evidence to this effect, it would be entitled to deny
summary judgment on that premise (and, in fact, find that the officers did use excessive force
if there were facts to support as much).

4 . . .

5 The only *fact* that the Court places at issue is whether the officer's conduct was or was not
6 reasonable. This is not a factual determination, but rather one of law.

7 Motion for Reconsideration, Dkt. # 30, pp. 6-7 (emphasis in original).

8 Defendant's citation to specific lines on page 5 of the Order is puzzling, as line 4 on that page
9 completes a discussion of the purpose of qualified immunity doctrine, and line 5 simply states that "Both
10 individual officers here have asserted the defense of qualified immunity from plaintiff's [§1983
11 claims]." Order, Dkt. # 28, p. 5. It appears that defendant is actually referring to the statement on page
12 9 that "Evaluation of these *Graham* factors in this case requires factual determinations which must be
left to the jury." Id., p. 9 (citing to *Graham v. Connor*, 490 U.S. 396 (1989)).

13 Defendant's contention that "the only *fact* that the Court places at issue" is whether the officer's
14 conduct was reasonable misstates the Court's conclusions. The fact that is at issue is whether the
15 officers' use of force was excessive under the circumstances. As the Ninth Circuit Court of Appeals
16 stated in 2002, "Because the [excessive force inquiry] nearly always requires a jury to sift through
17 disputed factual contentions, and to draw inferences therefrom, we have held on many occasions that
18 summary judgment or judgment as a matter of law in excessive force cases should be granted
19 sparingly." *Santos v. Gates*, 287 F. 3d 846, 853 (9th Cir. 2002).

20 The circumstances to be considered, described in the Order as the *Graham* factors, are taken into
21 account in this inquiry. These include, as stated in the Order, the severity of the crime at issue (plaintiff
22 was not arrested for a violent crime), whether the arrestee posed an immediate threat to the officers or
23 others (the officers have stated no reason to believe plaintiff was armed, and he would pose a threat to
24 the public safety only if he got back in his van and started driving), whether he was actively resisting
25 arrest (plaintiff was attempting to keep one arm free), and whether he was attempting to flee (it appears
26 from the video that he stepped toward the officers, not away from them). Order, Dkt. # 28, p. 8. It

1 appears from the video, viewed in the light most favorable to plaintiff, that Officer Hong changed his
2 stance and grip to break plaintiff's arm, so the question for the jury is whether that force was justified in
3 light of all the circumstances.

4 A judge of this Court recently denied an officer's claim to qualified immunity in a case where an
5 arrestee's fingers were broken by the arresting agent. *Martinez-Rodriguez v. United States*, 2009 WL
6 927752 (W.D.Wash. 2009). The agent filed an interlocutory appeal. In affirming the court's ruling, the
7 Ninth Circuit Court of Appeals states, "The district court correctly determined that whether [the agent]
8 used excessive force in violation of the Fourth Amendment in arresting Martinez-Rodriguez and
9 breaking his fingers was a triable question of fact." Memorandum Decision, *Martinez-Rodriguez v.*
10 *United States of America*, C08-265JLR, Dkt. # 57, April 14, 2010 (unpublished disposition).¹

11 Defendant has failed to demonstrate manifest error in the Court's prior Order. The motion for
12 reconsideration is accordingly DENIED.

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14 Dated this 9th day of March 2012.

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17 RICARDO S. MARTINEZ
18 UNITED STATES DISTRICT JUDGE
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27 ¹This statement is cited in accordance with 9th Circuit Rule 36-3, as the opinion is available for
viewing on the electronic docket.